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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,712	09/05/2003	Gary Steven Moore	CFLAY.00205	8275
22858	7590	07/26/2005	EXAMINER	
CARSTENS YEE & CAHOON, LLP P O BOX 802334 DALLAS, TX 75380			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/656,712

**Applicant(s)**

MOORE ET AL.

**Examiner**

Lien T. Tran

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25,27-34,36-44 and 46-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25,27-34,36-44 and 46-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

The 112 second paragraph rejection is hereby withdrawn.

The indicated allowability of claims 1-25, 27-34,37-44 is withdrawn in view of the newly discovered reference(s) to Calandro et al and Delpierre . Rejections based on the newly cited reference(s) follow.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-25, 27-34,36-38, 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calandro et al.

Calandro et al disclose a process of making ready-to-eat cereal. The process comprises the steps of creaming sugar, dough conditioner, emulsifier and a portion of the flour with fat or shortening, adding water and liquid sweetener such as honey or high fructose corn syrup, adding the remaining portion of the flour, leavening agent and starch to form a dough, resting the dough for about 30-60 minutes, extruding the dough

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to form shaped pieces and baking the pieces in an oven at a temperature of 230-550 degree F for 3-6 minutes. The flour component by be derived from any cereal grain or mixture thereof. Corn bran, wheat bran, oat bran, rice bran and mixture thereof may be used to replace the flour in whole or in part to produce a fiber-enriched product. The amount of added water is generally in the range of 2-15%. ( see col. 3 lines 35-50, col. 5 lines 52-60, col. 7 lines 24-25, col. 11 lines 65-68, col. 12 lines 5-13)

Calandro et al do not disclose a granola dough, premixing the binder syrup with water prior to adding to the dry ingredients, the temperature at which the binder syrup is maintained, mixing the syrup without water, premixing the dry ingredients with water before adding the syrup, the component of the syrup as recited in claim 8, the die compression ratio as in claims 13-17, the shape of the piece as in claim 19, the moisture content after drying, the drying temperature as in claims 24-25, the type of mixer as claimed, the use of roll extruder with the dimension as in claims 31-34 and filling the pieces.

In absence of ingredients defining a granola dough, the dough of Calandro et al differs from the claimed dough only in name. The dough of Calandro et al contains dry ingredients, water and binder syrup which are the same components as the claimed dough. Calandro et al teach mixing the dry ingredients and then adding water and liquid sweetener; thus, it would have been obvious to one to first premix the water with the liquid sweetener before adding to the other ingredients to obtain a more uniform mixing. It would also have obvious to one skilled in the art to determine the sequence of mixing which will give the most homogenous and uniform dough. This sequence can readily be

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determined through routine experimentation; applicant's has not shown any unexpected result or criticality with the claimed sequence of mixing. It would have been obvious to one skilled in the art to determine the temperature at which the binder syrup is maintained so that the syrup is workable. The addition of glycerin and sorbitol to control water activity and softening effect is well known in the art and would have been obvious to one skilled in the art. It would have been obvious to use any type of extruder depending on the shape of the product being made. The making of shaped pieces using extrusion is well known in the art and it would have been within the skill of one in the art to determine the appropriate extrusion device. It would have been obvious to use roll extruder with varying dimension or die with varying compression ratio depending on the configuration of the product wanted. It would have been obvious to use lower temperature depending on the shape of the pieces, the time of drying and the degree of drying wanted. Since the Calandro et al dough contains water in the ranges claimed and the pieces are subjected to drying within the time and temperature claimed, it is obvious the pieces have the same moisture content as claimed. It would have been obvious to add filling to the pieces to obtain different flavor and taste. The type of filling selected is a matter of preference.

Claims 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calandro et al in view of Delpierre, III et al.

Calandro et al do not disclose adding rolled oats and crisp rice coated with sugar.

Delpierre, III et al disclose rolled oat, crisp rice coated with sugar. ( see col. 7 lines 15-35)

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It would have been obvious to one skilled in the art to add the coated rolled oats and coat crisp rice as taught by Delpierre et al into the Calandro et al dough to obtain different texture, flavor and taste. The Calandro et al product is a breakfast cereal and it is notoriously well known in the art to add grain products such as oat and rice to cereal product. Delpierre et al do not disclose the amounts of sugar, crisp rice and oat. It would have been obvious to vary this amounts depending on the sweetness intensity wanted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 23, 2005

  
LIEN TRAN  
PRIMARY EXAMINER  
